

this unit. In this final rule, several portions of proposed Unit 1 were excluded from critical habitat it was determined that these areas lacked the moth's primary constituent elements. Other portions of proposed Unit 1 were excluded because we decided that the benefits of excluding critical habitat outweighed the benefits of including critical habitat. *See* Exclusions Under Section 4(b)(2) for a more detailed discussion of the excluded areas.

We did not include these additional lands in critical habitat Units 1 and 3 because we concluded that they were not essential for the conservation of the Blackburn's sphinx moth. This was based on available information concerning the status of the species in specific areas and the level of habitat degradation. We agree that some of these additional lands may potentially harbor undocumented populations of Blackburn's sphinx moth, and we also acknowledge that additional survey efforts are needed to ascertain the existence of potential moth or host plant populations in these areas and likely in other areas as well. While new reports of moth sightings or other observations of potentially suitable habitat provided by reviewers will be useful in focusing future survey efforts and research needs, we believe we have identified for designation, the best quality habitat essential for the conservation of the moth.

#### *Issue 4: Mapping*

(25) *Comment:* Two commenters stated that greater precision is needed to identify manmade structures and features such as roads, houses, and buildings already present within the proposed critical habitat designation areas. The DEA conceded that a lack of clarity regarding excluded features and structures could force landowners to incur costs to investigate the implications of the regulations.

*Our Response:* The maps in the **Federal Register** are meant to provide a general location and shape of critical habitat. The legal descriptions are readily plotted and transferable to a variety of mapping formats, and are available electronically upon request for use with GIS programs. At the two public hearings, the maps were expanded to wall size to assist the public in better understanding the proposal. These larger scale maps were also provided to individuals upon request. Furthermore, we provided direct assistance in response to written or telephone questions with regard to mapping and landownership within the proposed designation.

As stated in the proposed rule and this final rule, existing manmade features and structures within the boundaries of the mapped areas. This includes features such as the following that do not contain one or more of the primary constituent elements, and therefore, are not included in the critical habitat designations: Buildings; roads; aqueducts and other water system features, including but not limited to pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gauging stations (section in a stream channel equipped with facilities for obtaining streamflow data), intakes, and wells; telecommunications towers and associated structures and equipment; electrical power transmission lines and associated rights-of-way; radars; telemetry antennas; missile launch sites; arboreta and gardens; heiau (indigenous places of worship or shrines); airports; other paved areas; lawns; and other rural residential landscaped areas.

To further address concerns with the potential costs of identifying nondesignated areas, the Economic Analysis Addendum (Addendum) revisited the hour estimates presented in the DEA. Chapter VI, section 4.I of the DEA indicated that the landowners may want to learn how the designation may affect: (1) the use of their land (either through restrictions or new obligations), and (2) the value of their land. Since no commenters provided an estimate of time or cost incurred in order to investigate implications of critical habitat, and because of the reduction in acreage from proposed to designated, the Addendum revised the number of landowners downward, which resulted in a cost for landowners of \$173,000 to \$618,000 to investigate the implication of critical habitat.

While some landowners may expend time and money to investigate the implications of critical habitat on their land during the designation process, many landowners may not do so until after final designation is complete. Thus, the DEA and the Addendum treated these costs as a cost attributable to the final designation.

#### *Issue 5: Policy and Regulations*

(26) *Comment:* One commenter stated that excluding any areas from designation based on current management would violate 16 U.S.C. 1533(a)(3), and further stated that conservation efforts do not alter the habitat's critical nature or the need to ensure its protection. Multiple commenters stated that areas already subject to conservation measures, or which may be the subject of conservation agreements in the future,

should not be excluded from critical habitat.

*Our Response:* In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. If an area is covered by a plan that already provides adequate management, we believe it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not considered to be in need of special management or protection. We considered a plan to be adequate when it provides: (1) A conservation benefit to the species, *i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan; (2) assurances that the management plan will be implemented, *i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule in place, and/or have adequate funding for the management plan; and (3) assurances that the conservation plan will be effective, *i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives. Therefore, if an area provides physical and biological features essential to the conservation of the species, and also is covered by a plan that meets these criteria, then such an area would not have constituted critical habitat, as defined by the Act, because the physical and biological features found there do not require special management. However, in the case of the moth no areas were found currently to be adequately managed, and therefore no areas have been excluded on that basis.

As to future conservation agreement, several owners have indicated that including their lands in a critical habitat designation would have a negative impact on their existing and future voluntary conservation efforts for the moth and other species. After weighing the benefits of including these areas as critical habitat with the benefits of excluding them, we concluded that the designation of critical habitat would have a net negative conservation effect in some situations, and we excluded some of these areas from the final designation of critical habitat. *See* our